

# Calls for Legislative Action

2018-2019 Utah Supreme Court and Utah Court of Appeals Decisions | Judiciary Interim Committee | June 19, 2019

Case Name	Summary of the Case	Call for Legislative Action	Statute(s)
<b>Utah State Tax Commission v. See's Candies, Inc.,</b> <a href="#">2018 UT 57, 435 P.3d 147</a>	<p>See's Candies and Columbia Insurance Company, both Berkshire Hathaway subsidiaries, engaged in a transaction where See's sold intellectual property to Columbia in exchange for Columbia stock. See's also entered into a licensing agreement with Columbia where Columbia protected and developed the intellectual property and See's paid royalties to license the intellectual property back, including the use of the See's trade name.</p> <p>After an audit, the Utah State Tax Commission, under Utah Code Section 59-7-113, disallowed See's deductions and reallocated the shifted income back to See's because Columbia did not file Utah corporate franchise returns and the deductions reduced See's taxable income by 75%.</p> <p>See's sought a trial in district court. The crucial question in the district court was whether the Utah State Tax Commission had authority under Section 59-7-113 to reallocate the shifted income back to See's. Because the district court determined that Section 59-7-113 was virtually identical to a federal statute, the district court interpreted Section 59-7-113 to have the same meaning as the federal statute. Under the federal statute, the tax commission could reallocate income between two related companies if the transaction occurred on terms more favorable than would have been reached by two unrelated companies negotiating at arm's length. The district court concluded that the transaction between See's and Columbia resembled a transaction that would have been reached between two unrelated companies dealing at an arm's length and therefore the Commission did not have authority under the statute to reallocate the income to See's. The Utah State Tax Commission appealed.</p> <p>On appeal, the Utah Supreme Court concluded that the district court properly interpreted the state statute using the virtually identical federal statute.</p>	<p>"We understand the [Multistate Tax Commission] to argue that states have employed various other mechanisms to prevent related companies from reducing their tax liability by engaging in strategic intercompany transactions. And the Legislature may decide to implement these other mechanisms in the future should it wish to prevent companies like See's from receiving favorable tax treatment from transactions like the one at issue here." <i>See's Candies</i>, 2018 UT 57, ¶ 61, 435 P.3d 147, 159–60.</p>	<a href="#">§ 59-7-113</a>

**State v. Burr**  
[2018 UT 63,](#)  
[435 P.3d 198](#)

Defendant was sentenced to the Utah County Jail for 30 days and no restitution order was sought or ordered. After Defendant was released from jail, Utah County sent Defendant an invoice for the costs of Defendant's stay at the jail.

Defendant filed a motion to vacate the invoice, arguing that the invoice was invalid without a court order for restitution, that the amount of the invoice should be reduced under the factors set forth in the Crime Victim Restitution Act (CRVA), and that denial of his right to assert those factors violated his due process and other constitutional rights. The district court denied the motion. Defendant appealed.

On appeal, Defendant argued that the pay-to-stay statute required a court order before the county could impose the pay-to-stay charge, that the CRVA factors should apply, and that his due process rights would be violated if the pay-to-stay statute were self-executing and foreclosed his right to assert his inability to pay as the basis for challenging Utah County's invoice.

Although the Utah Supreme Court felt that Defendant raised serious questions about the statute on appeal, the Court concluded that the district court did not have jurisdiction to hear Defendant's motion to vacate the county's invoice. Once Defendant's criminal proceeding was resolved on final judgment and a sentence was entered, his case was closed and the district court lost any continuing jurisdiction over the matter. Therefore, the Utah Supreme Court concluded that it did not have jurisdiction on appeal.

"The questions presented here may also highlight the need for legislative intervention. It is safe to say, at a minimum, that the effect of the pay-to-stay statute is less than crystal clear on the face of the statute. And the anticipated means of enforcement of this provision is also a bit uncertain—as is the proper interplay between this provision and the [Crime Victim Restitution Act]. We raise these points in case they may prompt the legislature to intervene—to clarify the law and forestall some problems raised by [the defendant] that we are unable to reach due to jurisdictional problems identified herein." *See State v. Burr*, 2018 UT 63, ¶ 10 n. 3.

Pay-to-stay  
statute  
(§ 76-3-201)

Crime Victim  
Restitution  
Act  
(§ 77-38a-  
101 et seq.)

<p><b>Armendariz v. Armendariz</b>  <a href="#">2018 UT App 175, 436 P.3d 294</a></p>	<p>Husband wanted to enter early retirement, and because his income would decline after retirement, he petitioned the district court to modify his divorce decree with Wife and terminate Wife’s alimony award.</p> <p>A district court “has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.” Utah Code § 30-3-5(8)(i)(i). The district court determined that it did not have jurisdiction to terminate alimony because retirement was foreseeable at the time of the divorce decree and nothing in the divorce decree provided for termination of alimony upon retirement.</p> <p>On appeal, the Utah Court of Appeals concluded that Husband’s retirement was foreseeable at the time of divorce and the divorce decree did not provide for termination upon retirement, affirming the district court.</p>	<p>In a separate opinion, Judge Ryan Harris concurred with the majority decision, but stated that under a previous court opinion, retirement could amount to a substantial material change of circumstances. However, an amendment by the Legislature resulted in language that “by contrast, could give rise to situations in which payor spouses are saddled with alimony obligations that were computed based on pre-retirement income but that, subsequent to their retirement, they may not realistically be able to meet. If that result is not what the legislature intended, then it should consider amending the statute.” <i>Armendariz v. Armendariz</i>, 2018 UT App 175, ¶ 11 (Harris, J., concurring).</p>	<p><a href="#">§ 30-3-5(8)</a></p>
<p><b>In re K.J.</b>,  <a href="#">2018 UT App 216, 437 P.3d 609</a></p>	<p>The Division of Child and Family Services (DCFS) filed an abuse, neglect, and dependency petition in juvenile court, alleging that Child was abused and neglected. Child was placed in DCFS’s temporary custody. While this petition was pending in the juvenile court, DCFS brought a petition in juvenile court seeking termination of Father’s and Mother’s parental rights.</p> <p>Father filed a motion to stay the termination petition and argued that the State had to proceed on the abuse and neglect petition before proceeding to the termination petition. The juvenile court denied Father’s motion, and ultimately, the court terminated Father’s and Mother’s parental rights.</p> <p>On appeal, the Utah Court of Appeals concluded that there was nothing in the Juvenile Court Act (Title 78A, Chapter 6) prohibiting the State from bringing a termination proceeding while an abuse, neglect, and dependence proceeding was pending.</p>	<p>“If this is not what the legislature intended, then is should consider amending the relevant portions of the [Juvenile Court Act] to limit the circumstances under which the State may abandon pending abuse, neglect, and dependency proceedings in favor of termination proceedings.” <i>In re K.J.</i>, 2018 UT App 216, ¶ 43.</p>	<p><a href="#">Title 78A, Chapter 6, Part 3</a></p> <p><a href="#">Title 78A, Chapter 6, Part 5</a></p>

<p><b>State v. Coombs,</b>  <a href="#">2019 UT App 7, 438 P.3d 967</a></p>	<p>Defendant pled guilty to attempted child rape, attempted child sodomy, and sexual exploitation of a minor. At sentencing, the district court considered whether to impose a lesser sentence for the attempted child rape and attempted child sodomy convictions, but the court did not impose a lesser sentence.</p> <p>On appeal, Defendant challenged the sentences for attempted child rape and attempted child sodomy, arguing that his plea counsel failed to argue for proportionality in sentencing under the interests-of-justice framework imposed by <i>LeBeau v. State</i>, 2014 UT 39, 337 P.3d 254.</p> <p>The Utah Court of Appeals concluded that Defendant’s counsel acted reasonably and there was a tactical basis for not raising the interests-of-justice analysis. The Court also determined that the district court did not err in not engaging in the analysis because courts are presumed to have engaged in the analysis and courts are only required to engage in the analysis when the parties raise the issue.</p>	<p>“In our view, <i>LeBeau</i> constitutes blatant policy-based ad hoc review of legislative action not typically undertaken by the judicial branch. We would hope that, given the appropriate opportunity, our supreme court will revisit whether <i>LeBeau</i>’s approach should continue.” <i>State v. Coombs</i>, 2019 UT App 7, ¶ 22 n.4.</p>	<p><i>See LeBeau v. State</i>, 2014 UT 39 337, 337 P.3d 254</p>
<p><b>LeBeau v. State,</b>  <a href="#">2014 UT 39 337, 337 P.3d 254</a></p>	<p>Defendant was convicted of aggravated kidnapping and other crimes. At sentencing, the district court began with the presumptive sentence for aggravated kidnapping but considered whether aggravated and mitigating circumstances justified a lesser sentence under the sentencing statute for aggravated kidnapping. The district court imposed the presumptive sentence of life without parole.</p> <p>On appeal, Defendant challenged the district court’s analysis of “the interests of justice” under the sentencing statute for aggravated kidnapping. However, the Utah Court of Appeal upheld his sentence.</p> <p>The Utah Supreme Court reversed the Utah Court of Appeals, concluding that the district court abused its discretion in sentencing. The Utah Supreme Court concluded that while the district court has broad discretion in sentencing, “that discretion</p>	<p>Justice Lee dissented, interpreting the statute as providing broad sentencing discretion to the district court rather than requiring specific factors that the district court should have to follow. He stated:</p> <p>“The trade-offs between case-by-case discretion and guidelines-based sentencing formulas pose intractable dilemmas for policymakers, and my understanding of the matter is far too limited to feel confident in advocating for one over the other. Thus, my point is more narrow. It is simply that despite the limitations of our current regime, it is not our</p>	<p><a href="#">§ 76-5-302</a> (Aggravated Kidnapping)</p> <p><a href="#">§ 76-4-102</a> (Attempt)</p> <p><a href="#">§ 76-4-204</a> (Criminal Solicitation)</p> <p><a href="#">§ 76-5-301.1</a> (Child Kidnapping)</p> <p><a href="#">§ 76-5-402</a> (Rape)</p>

must be exercised in light of proper legal standards.” *LeBeau v. State*, 2014 UT 39, ¶ 67, 337 P.3d 254, 270. Because the phrase, “interests of justice,” was ambiguous, the Utah Supreme Court looked to the introductory provisions of the Utah Criminal Code and determined that the phrase required the district court to consider the principles of proportionality and rehabilitation.

Using those concepts, the Court determined that the “interests of justice” means that the district court must consider “the proportionality of the defendant’s sentence in relation to the severity of his offense” and “the defendant’s potential for rehabilitation when determining whether the interests of justice support a lesser sentence.” *LeBeau*, 2014 UT 39, ¶¶ 37, 55, 337 P.3d 254, 264. These standards include an objective assessment of the nature and circumstances of the defendant’s crime in relation to the harshness of the penalty and how the sentence compares to other crimes in Utah.

prerogative to remake it by judicial fiat. I dissent from a decision that strikes me as a baseless move in that direction.” *LeBeau v. State*, 2014 UT 39, ¶ 100, 337 P.3d 254, 279 (Lee, J., dissenting).

[§ 76-5-402.1](#)  
(Rape of a  
Child)

[§ 76-5-402.2](#)  
(Object  
Rape)

[§ 76-5-404](#)  
(Sodomy on  
a Child)

[§ 76-5-404.1](#)  
(Aggravated  
Sexual  
Assault of a  
Child)

[§ 76-5-405](#)  
(Aggravated  
Sexual  
Assault)